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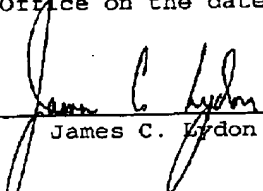
FROM: James C. Lydon

RE: Petition for Withdrawal of Finality of Official Action
U.S. Patent Appln. S.N. 09/763,355
By: Paulus DE LANGE et al.
Att'y. Case No.: BASE-102

TOTAL PAGES: 6 including cover sheet.

DATE: February 9, 2005

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James C. Lydon

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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the application of:

Paulus DE LANGE et al.

Serial Number: 09/763,355

Group Art Unit: 1725

Filed: February 21, 2001

Examiner: Tran, Len

For: FLUIDIZED BED METHOD AND REACTOR FOR THE
TREATMENT OF CATALYSTS AND CATALYSTS CARRIERS

PETITION FOR WITHDRAWAL OF FINALITY OF OFFICIAL ACTION

Commissioner for Patents
ATTN: 1700 Technology Center Director
P.O. Box 1450
Alexandria, VA 22313-1450

February 9, 2005

Sir:

Applicants petition for withdrawal of the finality of the Official Action mailed January 14, 2005 in this application. The facts supporting this Petition follow:

1. The first Official Action (1) maintained a Restriction Requirement, (2) objected to claim 1, (3) objected to the abstract, (4) rejected claims 1-5 as anticipated over U.S. Patent No. 4,518,750 to Govoni et al. and (5) rejected claims 1-5 over U.S. Patent No. 4,197,418 to Lee et al.

2. In response, applicants filed an Amendment which (a) canceled claims 4 and non-elected claims 6-13, (b) rewrote claim 1 and (c) presented new dependent claims 14-16.

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3. A second Official Action was mailed January 14, 2005. All of the previous rejections and objections were withdrawn. However, the second Official Action included a new rejection under 35 U.S.C. § 112, first paragraph, and a new anticipation rejection of claims 1-3, 5 and 16 over a newly-cited U.S. Patent No. 5,382,638 to Bontemps et al.

4. No prior art had been cited to the Patent Office between the mailing of the first Official Action and the second Official Action.

5. The second Official Action was made final on the argument that the applicants' amendment "necessitated" the new grounds of rejection presented in the second Official Action. See Paragraph No. 5 on page 3 of the second Official Action.

ACTION REQUESTED

The Commissioner is urged to withdraw the finality of the second Official Action because it is premature.

ARGUMENT

I. The Patent Office Has Withdrawn All Previous Rejections

None of the prior art rejections made in the first Official Action are maintained in the second Official Action. Instead, the applicant is confronted with totally new rejections.

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II. The Patent Office has Cited Hitherto Unknown Art

The second Official Action includes an anticipation rejection over newly-cited U.S. Patent No. 5,382,638 to Bontemps et al. Importantly, the applicants did not cite this reference to the Patent Office after issuance of a first Official Action. Instead, the Patent Office cited Bontemps et al. to the applicants as part of its second (final) Official Action. It is unfair to the applicants to make the second Official Action "final" where, as here, applicants have completely overcome the rejections contained in the first Official Action and were unaware of the existence of an allegedly anticipatory reference cited for the first time by the Patent Office.

III. The Applicants' Amendment Did Not "Necessitate" the New Anticipation Rejection

Claim 1 is the sole independent claim in this application. The Applicants' previous Amendment incorporated a Markush grouping of activation and/or calcination treatments from dependent claim 4, which was canceled. An additional "substantially residue-free" limitation was also inserted into claim 1. Accordingly, claim 1 was narrowed by the previous Amendment.

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The constriction of claim 1 could not have necessitated the anticipation rejection over newly-cited Bontemps et al. because, assuming, the anticipation rejection is valid over the present scope of claim 1, it would also have been valid over the broader scope of original claim 1 prior to the amendment. In other words, the Patent Office could have cited Bontemps et al. against the previous, broader version of claim 1 in the first Official Action. No amendment/constriction of claim 1 was "necessitated" before the Patent Office could apply Bontemps et al. against the claims.

CONCLUSION

Reconsideration and withdrawal of the finality of the second Official Action should be granted because the second Official Action contains all new rejections, including an anticipation rejection based on a reference newly-cited by the Patent Office. The amendment of claim 1 did not necessitate the citation of Bontemps et al., which could have just as easily been cited against the broader, original scope of the claims. It is unfair to the applicants to confront them with a new, allegedly anticipatory reference, and simultaneously deny them the right to amend their application.

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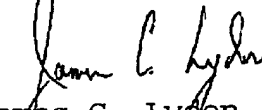
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PETITION FOR WITHDRAWAL OF FINALITY OF OFFICIAL ACTION

For all of the above reasons this Petition should be granted and the finality of the second Official Action should be withdrawn.

It is not believed any fee is required for entry and consideration of this Petition. Nevertheless, the Commissioner is requested to charge any such required fee to our Deposit Account No. 50-1258.

Respectfully submitted,


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